President felt that having regard to the difference in the wording of the sections it was mandatory on him on conviction to impose a fine of $10,000. Mr. Jayadeva has referred, however, to the case of *Ng Chwee Puan v. Reg.*[1] In that case the question under consideration was the meaning of the words under a particular bye-law imposing a penalty where the bye-law itself provided that upon conviction the offender was liable to a "fine not exceeding $25 or in the case of a continuing offence to a fine of $10 for every day during which the offence is committed". The Magistrate there held that whilst he had a discretion as regards the imposition of the fine for the offence itself, as regards the continuing offence he had no discretion and that it was mandatory upon him to impose a fine of $10 a day for every day it continued. The learned Judge considered however, that the bye-law was imperfectly drafted and he held that the word "liable" contained no obligatory or mandatory connotation and there was, in fact, a discretion to impose a fine up to $10 a day for the continuing offence itself.

The learned Deputy Public Prosecutor concedes that the construction Mr. Jayadeva seeks to put upon the section is in fact the correct one and that the penalty provided of a fine of $10,000 is in fact a maximum penalty giving the Court a discretion to impose any fine within that maximum.

I am, of the opinion that the learned President clearly had a discretion to impose a fine of any sum within the maximum amount of $10,000.

The learned Deputy Public Prosecutor has conceded in this case that the fine of $10,000 in the particular circumstances of the case was excessive. I agree. Despite the fact that the quantity of raw opium involved was large, 17½ lbs. in all, it would seem on the facts of the case that the appellant was a carrier at most and not the principal person behind the offence itself. The appellant is a lorry driver, aged 22, with a wife and a small child. In the circumstances of the case I, therefore, reduce the fine to one of $2,000, or 18 months' imprisonment. I am informed by Mr. Jayadeva that the appellant is, in fact, in a position now to pay the sum of $1,000. I therefore direct that the sum of $1,000 be paid forthwith and the balance within 30 days from today.

Order accordingly.

Solicitors: *Jayadeva & Zahir.*

TEH YEW WHATT v. PUBLIC PROSECUTOR.

[A. Cr. J. (Smith J.) November 5, 1957]

[K. L. — Criminal Appeal No. 32 of 1957]

Juvenile — Sentence of imprisonment — Juvenile Courts Ordinance, 1947, s.40.

Penal Code, s.365 — Juvenile pleading guilty to charge under — Whether can be sentenced to imprisonment.

It is always desirable before imposing a sentence of imprisonment on a person below the age of 21 to consider the powers under section 40 of the Juvenile Courts Ordinance, 1947 and to call for a probation officer's report to establish the background of the person about to be sentenced.

In this case the appellant had pleaded guilty to and was convicted of an offence of kidnapping contrary to section 365 of the Penal Code. The learned Judge called for a probation officer's report and from it he was satisfied that the proper order in the case was that the appellant should be detained in a Henry Gurney School until he attained the age of 21 years.

MAGISTRATE'S CRIMINAL APPEAL.

R. R. Chelliah for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Smith J.: — The appellant in this case pleaded guilty to and was convicted of an offence of kidnapping contrary to section 365 of the Penal Code. He was sentenced by the learned President to a term of 3 years' imprisonment against which sentence he has now appealed.

The appellant was one of a gang which kidnapped and held to ransom a Chinese businessman. Five of the gang were arrested, all pleaded guilty, and were sentenced each to 3 years' imprisonment from the date of his arrest.

The appellant was the only one of those arrested under the age of 21 years. The learned President before passing sentence did not call for any report on the background of the appellant nor from his grounds of judgment does he appear to have considered whether or not this was an appropriate case for exercising the powers of the Court under section 40 of the Juvenile Courts Ordinance, 1947. It is always desirable before imposing a sentence of imprisonment on a person below the age of 21 to consider the powers under this section and to call for a Probation Officer's report to establish the background of the person about to be sentenced.

I accordingly called for a Probation Officer's report and from it I am satisfied that the proper Order in this case is that the appellant should be detained in a Henry Gurney School until he attains the age of 21 years.

Order accordingly.